

**Milton Town Council
Comprehensive Plan Workshop
Milton Library, 121 Union Street
Upstairs Conference Room
Thursday, April 29, 2010 6:30 p.m.**

1. **PUBLIC HEARING**

2. Mayor Newlands opened the Public Hearing at 6:30 p.m. and asked everyone to stand.

3. Moment of Silence
Mayor Newlands noted that Vice Mayor Betts was out today and he asked everyone to observe a moment of silence.

4. Pledge of Allegiance to the Flag – Led by Mayor Newlands

5. Roll Call – Mayor Newlands

C Lester Here

C Martin-Brown Here

C Duby Here

C Abraham Here

Mayor Newlands Here

C Prettyman's out, his brother passed away the other day.

Vice Mayor Betts is on the mend, she is doing well though

6. Approval of the Agenda – Mayor Newlands

C Martin-Brown: So moved.

Mayor Newlands: Can we get a second?

C Duby: Second.

Mayor Newlands: We have an approval and a second; all in favor, aye; motion is carried.

7. Opening up the Public Hearing

Mayor Newlands: May I get a motion to open up the Public Hearing?

C Lester: I make a motion to open up the Public Hearing.

C Abraham: Second.

Mayor Newlands: I have a motion and a second; all in favor; aye, motion is carried. We will now open the Public Hearing for the Comprehensive Plan for 2003; Comprehensive Plan Update for 2010. We will be accepting comments from anybody in the public. I'm not making any opening statements so.

Seth Thompson: Please just identify yourself in your address before making comments.

Mayor Newlands: We will try and limit to 2 and 3 minutes and then give everybody a chance to speak and then go around a second time if we need to. We

have Brian Hall here from the State Planning Commission, Debbie Pfiel here from URS and Bob Kerr from Cabe Associates.

Dave Carey, 19 Bradford Lane, Lewes, DE: Thank you Mayor Newlands and Town Council for giving me the opportunity to speak. I'm here tonight; my family owns one of the two purple properties in Milton's Comprehensive Growth Plan; the tax parcel is 235-20-14. I have a number of comments that I would like to have included in the public record and would like to make for your consideration. At present we do not have any plans for this property. Any plans would take time to develop and at this time there are no plans to develop the property. What we are talking about tonight is a future land use map and, in fact, this property is in the annexation area. Nothing is final until the property is actually annexed into the town and assigned a zoning district. During the annexation process there will be considerable discussion about proper zoning for the parcel. If, at that time, there continues to be objections to certain uses in the zoning district contemplated, the Council would have every opportunity to rectify those objections prior to approving the annexation. The future land use map is a very preliminary step in a much lengthier and detailed annexation process. I think that the Planning and Zoning Commission, the Town, and my family actually share a common objective; designating the land in a way that is in the best interest of the long term viability of the Town of Milton. However, my family does believe that the Town of Milton can do better than to default to the least common denominator by designating this property as straight residential. Changing this property to R-1 eliminates planning opportunities available to the town, the opportunity of the town to add to its economic base and/or provide services to its residents. This property is unique in that it is bounded and served by significant state supported transportation and infrastructure. On the west it is bounded by Route 30; on the south Sand Hill Road, which is Milton's truck by-pass route; on the north it is bounded by the coastal lines rail spur. It is also bounded by Lavinia Street. My family thinks good land use planning would support taking advantage of the transportation infrastructure presently in place. The accompanying truck traffic and perhaps, one day, the rail service that abuts this property and could provide the town with rail. This property is also uniquely suited for a lot of the uses in the Town of Milton's current zoning designations; light industrial; commercial and business; residential and LPD. Though Milton doesn't currently have a mixed-use zone, it could be suited for that, as well. Many of the uses in Milton's light industrial ordinance are applicable to the property; some are not. Milton's current zoning states that the intent of LI-1, and I'm quoting "is to delineate areas which are used for and suited for limited types of manufacturing and industrial uses which are compatible with the adjacent residential and other uses and are permitted by special permit." We think this property can be used for and is suited for limited types of manufacturing and industrial uses which can be compatible with the adjacent residential uses. If some of the 28 permitted and special permitted uses are objectionable, why doesn't the town amend its Code to address those concerns by removing the objectionable uses? Equally important, if there are uses found in other zoning districts, that the town would like to add to

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encourage business development, create good paying jobs, improve its economic base and provide services needed by residents, why not add these at the same time? Last week I spoke with Brian Hall at the State Planning Office. My understanding from our conversation that this area of Milton is part of a general area, that both DelDOT and DEDO (the Delaware Economic Development Office) recognized for business development. We believe this property is well suited not only for many of the uses found in the Town of Milton's light industrial uses, but for many found in the business, residential and LPD zoning. With a wide variety of acceptable permitted uses, good site design, architectural design, and buffers, where needed, this property could offer countless benefits to the town, it's residents, potential and future employers and employees, residents old and new and visitors. In summary, we urge the Town of Milton to review the ordinances in LI-1; remove the objectionable uses; but more importantly, add appropriate new uses that ensure two things happen. One, the Town of Milton is in position to take advantage of the properties location to the state supported transportation infrastructure; two, that the Town of Milton positions itself to attract and accommodate business with good paying jobs and/or wants to fulfill the recurring needs of residents and visitors. Thank you.

Mayor Newlands: Thank you Mr. Carey.

Jeff Dailey, 211 Gristmill Road, Milton, DE: Five year plans are statement both to the townspeople of today and tomorrow. I have issues with Planning and Zoning of Sussex County, first off. They look at Route 30, a truck route, as a highway that should become a 113 or a Route 13; and if you have been on 30 lately, driving from Milford all the way to Millsboro; you'll travel a very beaucolic highway; and if I live long enough I hope I see it that way for years to come. We have discussion at the Planning and Zoning Meeting where they invited the Town Council to that meeting and it became very clear to me from what a number of residents said, that the proposal to take the property that was just mentioned and rezone it on the five year plan; it was pointed out that it was less than a mile from Route 16 and the development to the north of town. I want to reference Sussex County for just a moment. They have growth corridors in the Rehoboth/Lewes area on Route 24 and Route 404. And there's been an uproar recently because they have been rezoning properties along Plantation Road and they've already designated growth corridors running east and west; they're now starting to identify a route parallel to Route 1 as a growth corridor by these rezonings. We're going to do the same thing; we're going to rob our downtown, by sending a message that we will rezone to the west of us on Route 30 and Sand Hill Road, as commercial; when we have a downtown that we have to revitalize and we already have a growth corridor to the north on Route 16, which is going to develop, no matter what; and much of that property along there has already been zoned for commercial use. So I would hope that we would send a message to the townspeople of today and the townspeople of the future, five years from now that we would like to see limited development of a commercial nature in and immediately around Milton on the south side, the east side and the west side. We've already got the growth corridor there. It's called Route 16. The Food

Lion is there; we can see what's happening. We have a downtown to revitalize. Why would we want to send the message that we are willing to compete with our downtown rebuilding by rezoning this property on a five-year plan? It makes no sense. We are mirroring exactly what has been happening in Sussex County. It makes absolutely no sense and I would hope that the parcels in question would remain as agricultural and for residential development.

Mayor Newlands: Thank you Mr. Dailey.

Shauna Thompson, 16793 Island Farm Lane, Milton DE: My family owns one of the properties that are currently in the Comprehensive Plan as L-1 (Land Designated for Light and Limited Business and Manufacturing) which do not have a significant impact on neighboring non-industrial uses; and that's out of the Code. I would like to make a few comments on the Planning and Zoning Commission's recommendation to downgrade the existing plans L-1 designation to R-1. First and foremost, I want to assure you that we do not have any existing plans for the property; therefore we do not feel that you should rush to make changes that may impact the future of Milton's growth. It is our belief that Milton must plan for economic growth, as well as residential growth. No community can remain vibrant without financial opportunities. Good paying jobs allow individuals to invest in their properties and create a demand for homes. The past Planning Commissions foresaw a limited industrial district as a way of increasing employment and the tax base in Milton. The State has invested in the infrastructure of the area surrounding these properties. State Route 30 is a designated truck route and DelDOT just upgraded Sand Hill Road to serve as Milton's truck by-pass. There is an existing rail line. For these reasons, we believe that these properties are ideally situated as an economic corridor. We feel that the people of the Town of Milton have at their disposal the means to shape these properties into a desirable asset for the town and surrounding community without downgrading it's designation to R-1. You have the ability to remove objectionable uses from your zoning articles and add uses that are not listed. You can require berms and setbacks and landscapes that protect the neighboring area. In other words, you can plan for economic growth; provide an opportunity for good paying jobs in the community; provide services to the residents of Milton and also protect the esthetics of the area. Please do not throw the baby away with the bath water. Take the time necessary to review the existing L-1 ordinance and see fit to provide the economic growth needed in the community; while incorporation properties designated L-1 into the surrounding neighborhood. Thank you Mayor and Council for the chance to speak this evening and I hope you consider this an opportunity to improve Milton's Codes, rather than default to a straight residential designation.

Mayor Newlands: Thank you.

Virginia Weeks, 119 Clifton Street: I just want to ask the Town Attorney something, if I may? I'm also Chairman of the Planning and Zoning. I'm appearing here tonight as a private citizen, in my own right. Is that all right, can I do that?

Seth Thompson: As long as you make that abundantly clear.

Virginia Weeks: Yes, I am only speaking for myself. This is the map that I just handed to the Council and so on, so you can see it. First of all I would like say that I have worked on land use in other areas; I have been privileged to work here; I have attended courses at IPA; one thing that Max Walton, the distinguished attorney who works only for towns and other people at the IPA have made perfectly clear, is that nobody has a vested interest in a zoning district designation. The town controls that. Nobody has a right to any particular zoning. Now I would like you to look at the map. What we have done. This is the actual piece; this is Wagon's West; and this is the actual piece that Mr. Carey owns and this is the piece that Mrs. Thompson owns. Robin Davis, who isn't here tonight, has referred to that as 141 acres. If you pick that up and you place it over the downtown area and you begin on the other side of Route 16 and you extend it, it covers most of the town and goes to the other side of Cave Neck Road. This property is 141 acres, which makes it if an acre is 43,560 sq. ft.; that makes it 6,141,960 sq. ft. That is the equivalent of approximately 27 Pelican Squares, that's the area where Staples and Super Fresh are in; or almost 7 Christiana Malls. I believe this is way too much and way too big to be designated as an industrial area. I don't care whether there are plans for it or not. I believe that the Council has the moral obligation; the ethical obligation to protect the town and allowing this size of an industrial area, next to what is high-end housing for Milton and here also would be; and Mr. Carey also owns this piece of property; would be wrong. The other reason that I think you really need to change it is, that this is a growth map. If you notice over here on this part, this is Elizabethtown. On our growth map in 2003, they designated this mixed-commercial-residential; which oddly enough is a zoning district that doesn't exist in our zoning code; and they also gave it an LPD designation, without any public hearings of people who understood. I mean you shouldn't be giving an LPD overlay in a growth zone. When they went to the County and said we would like to do Elizabethtown, the County could look at the Milton growth map and say this is great, that's what Milton wants; it's on their growth map. If you leave this Light Industrial, these people can go to the County and can say we want this rezoned from AR-1 to Light Industrial and look, Milton wants it that way; it's that way on their growth map. Then you have no control. We asked Mr. Carey to please consider sub-dividing a small parcel at the bottom and we would be happy to make that Light Industrial along Route 30; but this whole thing is just way too big. It's just too big. And what are you going to do with the two little parcels that Milton didn't make Light Industrial down here; these two little house parcels? See them in white at the very bottom? Are you going to surround them with Light Industrial? This is bad planning. It's just pure and simple bad planning. Thank you.

Mayor Newlands: Thank you Ms. Weeks.

Denise Southard, 309 Union Street: I would like to keep it Light Industrial; I support the Carey's. I would love to see a shopping center there, so I don't have to keep going down Route 1 for all of my needs. I would like to see it Light

Industrial. I think we need jobs in the area, as well, so I don't know what the problem is. I don't think it's too big. I think it's wonderful. Thank you.
Mayor Newlands. Thank you.

Mayor Newlands: Has anyone submitted any written comments? Ms. Weeks.

Virginia Weeks: I just wanted to say one more thing. This Comprehensive Plan review that's been done, has been done on a very short budget and as a Council, I want to tell you that you really need to start putting money aside now because you're going to have a to do a big one in another five years; a total rewrite; and you need to start budgeting for it now, because on the fifth year you don't want to have to come up with \$100,000. Thank you.

Mayor Newlands: Thank you. Can we have a motion to close the Public Hearing, if there are no more comments?

C Lester: I so move.

C Duby: Second.

Mayor Newlands: We have a motion and a second; all in favor, aye, motion is carried. The Public Hearing is closed at 6:55 p.m.

8. Old Business: Discussion and possible vote on the proposed updates and changes to the current Comprehensive Plan.

Mayor Newlands: Ms Martin Brown is shaking her head no.

C Martin-Brown: I just wondered, Mr. Mayor, if that would not be part of Monday's agenda.

Mayor Newlands: It is on Monday's agenda. I didn't realize that it was listed here as a vote.

C Martin-Brown: Can I make a motion here, Mr. Mayor, that the agenda be changed and this action be taken on Monday?

Mayor Newlands: The vote can be tabled until Monday and I think Ms. Duby wants to have discussions.

C Martin-Brown: If I make the motion, do you want to discuss it then?

C Duby: Are you talking about the vote or discussion? I have no problem with the vote on Monday; I assumed we would have the vote on Monday; but I have a number of things and I have a preliminary question about process.

Mayor Newlands: Let's finish C Martin-Brown's question.

C Martin-Brown: Mr. Mayor, I only ask now do you need a motion now to defer on this actual agenda item before we go into discussion?

Mayor Newlands: Just the vote part, yes. To table the vote until Monday, we need a motion on that.

C Martin-Brown: Yes, that what I was making. I would like to table the vote until Monday.

C Duby: Second.

Mayor Newlands: We have a motion and a second; all in favor; aye; motion carried. Now we can have discussion.

C Duby: I have just a preliminary question about process. We've got some specific recommendations from the Planning and Zoning Committee; is that going to be a point by point separate vote, is my first question? Then secondly, I have

quite a few suggestions for quite a few things in here that really needed updating; they are incorrect; the staff and I think one of our consultants did a lot of updating; and very good updating in terms of updating tables with current data and all that sort of stuff; but there are just some other things that I think just got lost in the shuffle that need to be updated before we would vote on the entire document and I assume that my colleagues may have similar comments. So I guess my question is just how we go about doing that. Do you want to go through some of those tonight, as part of the discussion; do you want to do all of that on Monday?

Mayor Newlands: We are going to lose about \$10,000 if we don't get this approved on Monday night; but adding in extra comments and extra information into the Plan right now, we'll have to bring it before a public hearing again; or at least extend the period of time. So right now this is the last hearing we're going to have on this, before we vote on it on Monday. So putting in substantial changes in here is going...

C Duby: I don't know whether you would call them substantial. It's updates; I mean I don't feel comfortable voting for something that's incorrect.

Seth Thompson: Is it an issue of wording?

C Duby: Well, some of it is wording; but some of it is just...

Mayor Newlands: We can go in and amend this after the fact and put an amendment in short notice afterwards, if there are things that need to be corrected.

C Duby: There are businesses listed that are no longer there; there is a lot of information about the Park that's incorrect or incomplete; there are a lot of things about town activities are incorrect; things that we used to do when this first draft was written that we don't anymore. It's not a life or death matter, but I don't think it makes our town look good to have incorrect information when this goes to the State.

Mayor Newlands: I agree that this sat for a year and we're at jeopardy of losing a nice grant to get this part of it done and we've had discussion with the State Planner and Mr. Dickerson; if this gets approved Monday night, Tuesday morning we start on the next phase and start working on the next section.

Debbie Pfiel: I want to let you know that Seth, the question I have for you is the items that she's talking about were, if they are not planning related items; we had a staff of twelve in there; we did not go through the entire document and say now we have twelve; now we have fourteen; because that changes too. So if they are non-related planning items and she gave a list Monday night, would that need to open a public hearing again?

Seth Thompson: I would think no.

Debbie Pfiel: They are just updates on specifics.

C Duby: None of them have to do with planning. They are not changes in maps; they are not proposals as to what is the planning part of it.

Seth Thompson: Demographics.

C Duby: It's that long description that describes Milton and its businesses and its activities and its public parks and recreation.

Debbie Pfiel: And that was a limited scope that we did so, if there is a list maybe, my recommendation would be is if there is a list that you could just type out the

page and content and maybe provide it for Seth, because he doesn't do anything on the weekends, maybe he could look at it for you on Monday and see if there are any that would prompt a public hearing; because, I agree, some of that stuff is very minor; it's just taking out a business that isn't there and I agree with that, but if there is a list and Seth could say that it wouldn't be determined to require a public hearing; you might be more happy with the document, as a recommendation.

Seth Thompson: The bottom line is if a business closes between today and Monday...

C Duby: And it's not just that, it's basically descriptions that are wrong and events in town that are wrong; and I would just like it to be correct when it goes forward and if we can do it; I'm happy to sit down and type the list; which will be a pain in the butt; but I'll do it if we can do it that way and get it in. Thanks, Debbie.

Mayor Newlands: So it's just factual things about the town.

C Duby: Yes, it has nothing to do with changing a growth area; it's not that at all.

Mayor Newlands: Fine. Okay.

C Duby: So the other question I have is the Planning and Zoning recommendations; are we going to be voting on those, as I understand it, most of those were kind of wording things to accept for this issue of the Carey-Thompson property, is that right? So are we going to go through those?

Mayor Newlands: I think we could go through any exceptions that we have on Monday night. Anything that we don't want to approve; so any exceptions to these lists; and we would only list the exceptions, but to go through each individual one would be a little too laborious.

C Duby: It was just a process question.

C Martin-Brown: Mr. Mayor, if C Duby could do those factual changes in a way that it says, for instance, Joe's Barber, and then it says, replace with Henrietta Hair Dresser; so that it's very, very clear where those changes are in the text, then they could be amended as part of the vote.

Mayor Newlands: Just strikethroughs and add in the new text.

C Martin-Brown: Yes.

C Duby: First of all, I don't have an up-to-date current copy of this; so we already have to change this; the staff has made one; we would have to make another set of changes over that; it's going to be...

C Martin-Brown: I know there is an amended list where you just have a stand alone list.

C Duby: That's what I thought you were suggesting.

C Martin-Brown: What I'm asking for that when that stand alone list is done, if it's possible for you to say, it says this, and then give the new language, so we know where it is and the page, so it's documented.

C Duby: Yes, I'll have the page number and stuff.

C Martin-Brown: All right, thanks.

C Duby: In some cases, its additions; it's not institutions.

C Martin-Brown: It's not about proper nouns and things like that; so we know what they are.

Mayor Newlands: That's fine.

C Duby: So as I understand it then, the only thing that we're voting on is the Plan that they submitted to us.

Mayor Newlands: With the change list that's in there.

C Duby: With the change list that's in there and I'll have the additional change list; so that the only issue in terms of the maps, themselves, that the Carey-Thompson property.

Mayor Newlands: There are some things that Ms. Weeks, the couple of changes in zoning that were done for commercial vs. residential and vice versa, were they conveyed back to the owners?

Virginia Weeks: Mr. Sherman asked that the property he owns behind Food Lion be changed to commercial. We suggested that not happen because we feel that people behind there deserve a public hearing before we do something like that. The other thing was that there was a house over at Dr. Wagner's area because those houses are all zoned commercial; but according to Mr. Hughes' letters in their deeds it says it can only be used for residential and he asked that it be changed to residential.

Mayor Newlands: Those changes have been conveyed back to those owners?

Virginia Weeks: No, because you have to make them. We can only make the recommendation.

Mayor Newlands: I don't have the recommendations.

Virginia Weeks: The recommendations have been made to you, yes.

Mayor Newlands: The recommendations have been made to us.

Virginia Weeks: That's not our job. Quite frankly, if his deed says that, then maybe all the houses say that over there and that needs to be looked at. The other thing that I think we recommended to you that you haven't addressed that all of the properties in the Town Center be put into the Historic District, which you can do by ordinance. It's an easy move now. It to preserve the character of downtown, because, for example you take Bodie's, or something, you could build a five-story glass skyscraper there and if you want to protect Governor's Walk and so on, you need to get those into the Historic District; that was one of our recommendations. I don't know if that came through to you.

Mayor Newlands: C Duby, I would think if everything is in order on Monday night, we could just do the exceptions; and this has been out to the public and even the PDF's have been properly noticed so they can get the PDF's pretty easily now.

Debbie Pfiel: If I may assist in summarizing, there would be a couple of documents; it would be C Duby's list; and then the memo from Robin Davis that lists 1 through 5 include all the changes; and then you could separate all those out if you chose to, because maybe you want to make a recommendation on some and not the other; but that would be the other document; that you could do contingent upon if Seth is clear with what needs to be changed, you could prove contingent upon.

Mayor Newlands: Okay, thank you.

Debbie Pfiel: Are there any other questions?

C Duby: I have one which may be for Planning and Zoning or it maybe for Mr. Carey and Ms. Thompson – I'm not clear on when that piece of property or those two pieces of property were made Light Industrial? How long have they been that way in the Comprehensive Plan?

Mayor Newlands: 2003.

Shauna Thompson: In the 2003 Comprehensive Plan.

C Duby: I thought that's what I've seen in one place, but I thought I saw a different date.

Mayor Newlands: The town approached them to make it Light Industrial.

C Duby: I would like to know the circumstances of that, if that was the way it came about.

Dave Carey: Actually, what happened was I was in Town Hall; I was talking to Eric Evans, at the time. He was the Code Enforcer and the Comprehensive Plan was up for review; he looked at me and said you know the town is thinking about designating this area of town Light Industrial; you have Cannery Village; you have the other part of Federal Street; and we're looking at making that a limited light industry use. Do you have any objection? And I said, well geez, we always thought that there would be houses there. And he said, well this is something that the town thinks is important. So I said, I guess we have no objection; I'll talk to my family; and that's pretty much the sum and substance of it. So if you would like to collaborate my story, you are welcome to call Eric Evans.

C Duby: Was there ever a hearing on it or on the plan?

Dave Carey: No it came up in the office, so it was passed in 2003; the reason we're asking to keep it; we, as I said in the Planning and Zoning Public Hearing; what's important to us is that property is well suited for jobs in this environment. We're talking about manufacturing; we're not trying to compete with downtown Milton; there's a lot of need for jobs in this area; it serves by the rail; by the state highways, like it or not; and there are a lot of innovative things that could happen with those properties. That's what we're asking to sit down and have that kind of discussion.

Mayor Newlands: Thank you.

Gene Steele, 122 Carriage Drive, Milton, DE: If we're having a hearing now to change this to RR-1, shouldn't there have been a hearing when they changed it from residential to light industrial; there wasn't a hearing at that time; then it should just go back to what it originally was, RR-1.

Mayor Newlands: I don't think it works like that.

C Abraham: I know we had hearings for the Comprehensive Plan.

Bob Kerr, Cabe Associates: If my memory hasn't failed me this evening, the 2003 Comprehensive Plan went through the exact same process that you're going through tonight. There were several meetings with Planning and Zoning; several meetings with Mayor and Council; and group meetings the same way. At that time, the State Planning Office was very involved with generating that version of the Comprehensive Plan. Ann Marie Townsend, who is no longer with the office was the author of part of it, with the assistance of the town staff; but it went through the same review process, many, many times.

Mayor Newlands: Thank you. Brian, I was just going to ask if you have any comments.

Brian Hall: Yes, Sir, Brian Hall, Office of State Planning. Just to reiterate the gentleman from Cabe Associates; he's actually correct. Prior to the Plan being certified by the State or recognized as an Official Comprehensive Land Use Plan for the town, the town would have to be able to document and demonstrate that it went through a series of proper, public procedures that include obviously meeting with the Planning and Zoning Commission, at that time; as well as discussions with Mayor and Council; and then also having duly acted upon through either recommendation of voting; adoption through resolution, ordinance, etc. So being that I was still trimming trees at that time, I will plead partial ignorance to this situation; however, though based on review of the documents in hand; it did go through a proper public procedure; before being considered and certified by my current office. Mr. Mayor, your question.

Mayor Newlands: Did you want to make any comments tonight on what we're doing and any comments that some of the people in the public made?

Brian Hall: No, I'm pleased to have been invited here and I thank everyone for their engagement in the process. I know that these can be very difficult exercises in determining where and how any town grows in every direction. The thing that we want to make clear is that we will be looking, and continuing to look at the document; based upon the recommendations from this Council, as well as its Planning Commission; and comparing it against to those guidelines set forth in Delaware Code; so we're making sure that it has all the necessary checks and balances and all the necessary aspects in place before it can be considered a Certified Comprehensive Land Use Plan. The key to remember that this is a living and dynamic document; it is subject to change; as we have discussed both with staff; as well as with the consultant; members of this community through different venues; there are opportunities as the Plan does move forward to be able to consider possible amendments, as well as to consider possible Master Planning efforts to look at specific locations of a community to try to define better uses; there are also opportunities to consider better design and better design manuals as part of the review of any Comprehensive Plan or a review of any towns existing Zoning Code. So I would just encourage, and I know that this is a difficult process; many of us would like to see some closure in the hopes that we will be able to move forward; that you are cognizant of all aspects and consider those opinions that have been expressed tonight; but bear in mind that we'll continue to work with the town; both through this process, as well as the Certification vote Monday evening and then also working through any other aspects as the town considers to move forward with implementation of the document.

Mayor Newlands: If we left this area Light Industrial, would this plan, as it is on Monday night, there is no reason why we can't jump in on Tuesday morning and start looking at refining the area; refining and looking at mixed use; refining what goes into those areas; as an amendment near term afterwards, right?

Brian Hall: No, to speak frankly, there are some local jurisdictions that I work with here in Sussex County that recognize the day after it has been adopted, pending certification by the State, they realize that they have to start all over

again. So in this case, there is absolutely no reason that Tuesday morning that Committees could be formed, new directions could be established, the Commission and/or Council could explore various options whether it be through our office, through work that we are doing with the University of Delaware; whether it be through IPA or the Coastal Community Initiative; define ways to Master Plan this area; again develop design patterns; design guidelines for these specific uses; as well as, even drilling down to some of the very basic potential Code review and revision. So there's nothing to say that we can't start all over again on Tuesday morning as some of my local jurisdictions fully recognize.

Mayor Newlands: Right, but we can put an amendment in within the next six months, if we needed it? We don't need to wait five years?

Brian Hall: No, the document can be amended as many times as necessary; we encourage a town be thoughtful of its amendment process; not to use them lightly per se; but to have taken the time to fully review and evaluate whatever exercise or whatever action your intending to implement and then go forth with the amendment. Our office has a variety of ways that we can assist you in that effort; but again, it is a living document; it is something that can be changed based upon the needs and demands of the community. Thank you, Mr. Mayor.

Mayor Newlands: Thank you.

C Duby: I have another comment which his comments raised. I guess this is probably for either Seth or the Planning Office. It is my understand, and correct me if I'm wrong, that if whatever that zoning designation is for this particular piece property, it's a pretty big piece of property; but let's say this one and let's say it stays Light Industrial and let's say that three year's from now; one of the owners wants it annexed into town; the come in, they ask for annexation as Light Industrial. We have no choice in terms of letting it in without amending, if we want it to be something other than Light Industrial, we would have to amend the zoning map at that time, is that correct?

Brian Hall: I'm going to step back just a little back, because I think there are a few words that are being used interchangeably that create a level of confusion. A future land use map by definition and reference to Delaware Code is not a description of a Zoning Map. It is a description of desired intended uses that you think that would be suitable for a given area or for a given parcel. In this case, based on the map that is presented in this Plan being considered for Certification and for Adoption; it shows a desired use of Light Industrial. At this point in time, to my understanding of the circumstance, the individuals have not fully been annexed into town at this time, so as part of that annexation exercise, you have, yes in fact, desired at this point, based on this map, a possible Light Industrial use; but the individual has not secured that zoning. Until the individual has completed the proper annexation process, as well as in this case if the land is not currently already annexed into town, would have to then solicit the zoning to the next level. So if we wanted to go from residential to commercial we would have to have the public hearings and the various necessary actions to support that change. Right now were talking about a desired use. Some of the things that we've talked about make and solidify the case that it could be suitable for Light Industrial, because it is adjacent to rail; it is adjacent to a road that was designated as a truck by-pass;

these are all things to consider as part of the exercise in first annexing; then going through the rezoning process. But, again, things that we have talked about as of late, in going through the exercise of having the plan reviewed through the PLUS process, as part of preparing it for certification by the town, has been there are a variety of toolbox to consider as this moves forward. Some of the statements made tonight are correct, that in comparison to lands throughout Sussex County right now, the least percentage of land mass that I have identified for any type of use is industrial; so yes, there is a desired push given the recent economy and the things that we have all experienced, to see more of those lands engaged into the landscape, because during the past economic boom, the best desired use and the best desired zoning at that time, was some sort of residential.

C Duby: Well, the question that I'm asking doesn't really relate to this property specifically. I think it would be helpful to me, and perhaps to my colleagues to understand very clearly what our options are at the time an annexation request is made; given that we have in our land use map already designated something for a proposed use; and I understand that's not zoning. We're not zoning that property.

Brian Hall: Right.

C Duby: I got that. But I guess I need to know what our options are under two scenarios: 1) is the one I described; it's already designated as it is now in the plan as Light Industrial. They come to us and request annexation and the zoning they are requesting is Light Industrial.

Brian Hall: Then bear in mind that this is, again, a 2003 Plan; again a 2010 Plan; it's a living document; at which point in time things do and often times change. Part of your process, if the individual comes to solicit annexation and to solicit the zoning will be to weigh the merits in case that the individual expresses. So again, to attain the zoning; and bear in mind, I'm beginning to step into the world that is Seth's world and ask to play an attorney.

C Duby: I'm just asking what our authority is; I understand that we would be weighing the decisions; but the issue is what do we have the authority to do?

Brian Hall: Well, I'm going to look to your attorney for the official authority; but from a general assessment of any circumstance you have the right to say yea or nay to any circumstance based upon the information presented to you. If, in fact, the decision is not to look at this now as a Light Industrial parcel, as identified, you can then, again, amend the Comprehensive Land Use Plan as we described earlier; but again, that amendment would still go through the public process; through your Planning and Zoning Commission; through your Mayor and Council; and again, allowing for public discussion.

C Duby: Okay, then the other scenario that I want to know about is the reverse. Let's say either we change it and they still want to come later as Light Industrial or let's say we leave it as Light Industrial and they come to us three years from now and say we want to annex in and we want this to be a residential development. Again, I assume the scenario is the same; that we have to amend the zoning map or amend the Plan under either circumstance. Whereas, if we had it designated as one thing and they came and requested to be annexed in under that thing; no amendments necessary; no change we just waive whether we want to annex, of course.

Brian Hall: Right; what you are alluding to is, is if you already have this and the individual is coming in requesting what is supported under the Zoning Code under the classification, you've thrown me, the State Planning Office, out of the equation, because you do not have to do a Comprehensive Plan Amendment. If the individual comes in and wants to be a new classification of mixed use; or wants to be solely residential; or wants to be a Hospital; whatever there is based on the desired output of the plan; then that individual would have go through an additional step which is a Comprehensive Plan Amendment; then the normal town process is what we've already described.

Seth Thompson: Brian summarized it very well, the main thing would be and obviously, things are always subject to change and you can't act arbitrarily and egregiously in the future; in essence you're going to have some factual basis for a decision that you make; you can't say, oh we made a mistake back then; now we're going to cover it up. Just be aware that circumstances change and your actions today and it's not as if you can just erase them. You do need findings and you need a substantial basis for any sort of actions you take.

C Abraham: Would this be the right time if we found certain items in the Light Industrial to amend those items now or would that be an amendment? I'm not trying to hold up the process at present; so would this be the right time to do it quickly or wait in an amendment if we found certain things.

Mayor Newlands: I don't think we can do it quickly.

C Duby: That would be an ordinance change, right; that doesn't have to do with the Comp Plan.

Seth Thompson: And that is possible though. That is certainly, and actually that has been suggested obviously.

Mayor Newlands: That is part of the zoning ordinance for Light Industrial; that's the list of uses within Light Industrial; and that can get done any time later on.

C Abraham: I just thought maybe that would fix the problem.

Mayor Newlands: It definitely needs to be done.

Brian Hall: We would consider that an implementation item; so an idea is that in most Comprehensive Plans, as well as in this Draft that you're considering; it has review and consideration; and if necessary, amendment of any zoning code in place. So, again, that may be based on direction from Commission or based on review and opinion of Counsel, this might be priority number one we consider; or we might consider the need to address nuisance cats in town; whatever the priority zoning happens to be; based on that discussion.

C Martin-Brown: Brian, your explanations are very helpful. If the Comprehensive Plan includes the designated or proposed Light Industrial area and we submit to you the Plan as presented on Monday night; and then the person comes to us for annexation; and at that time there has been a reassessment as to whether or not this would be a good idea for 141 acres; and the Council at that point asserts that that no longer is a good idea and they want it changed to residential and that would require an amendment by you; does the town position itself with a prejudicial situation to be sued by the Light Industrial holder because of the presumption that has been guiding that person owning that land is that because the town did that in the Comprehensive Plan they could assert that this

was an unfair response to their annexation and we would be in litigation. I'm a little fragile about litigation these days, with all due respect.

Brian Hall: I'm going to go back to my original statement; although I am asked to play an attorney on television, I am not an attorney by practice; I would defer your specific question to your Solicitor, Mr. Thompson.

Seth Thompson: You seem to be asking a question in terms of vested rights; we heard that term earlier; one of the public comments was with regard to that. That's a fairly delicate legal analysis; you've heard the fact that the people haven't done anything with their property currently. They have no plans. That's a very easy case under that analysis. In terms of what they do going forward; but the bottom line is we're not dealing with a parcel that is currently in town; we're dealing with a growth area; so to the degree that you change your mind; you need to be able to show why you changed your mind. In terms of what actions they take in the interim, the analysis could be very different.

C Martin-Brown: Thank you.

Mayor Newlands: Thank you, Mr. Hall.

Brian Hall: Thank you.

Mayor Newlands: Is there any other discussion.

9. Adjournment

C Abraham: I move to adjourn.

C Lester: Second.

Mayor Newlands: We have a motion and a second. All in favor, aye; motion carried. Thank you all very much. This public hearing is adjourned at 7:26 p.m.